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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Florida Department of Management Services,)	DA 98-977
Motion for Declaratory Ruling or, in the)	
Alternative, Petition for Waiver)	

COMMENTS OF BELL ATLANTIC

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June 11, 1998

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COMMENTS OF BELL ATLANTIC¹

I. Introduction

The Commission should grant the petition of the Florida Department of Management Services ("Florida") and find that the mere exercise of renewal clauses in contracts for services provided to schools, libraries and rural health care facilities would not jeopardize their status as "existing contracts" under the Commission's Universal Service rules, 47 C.F.R. § 54.511(c). Such contract renewals under their original terms are not "voluntary extensions of existing contracts" which must be rebid to be eligible for universal service funding. *See* 47 C.F.R. § 54.511(d).

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

II. Argument

Florida has shown that the Commission should distinguish contracts that are voluntarily extended after the fact from those that are renewed pursuant to terms in the original contract. Under the rules, the former must be rebid in order to be eligible for funding. 47 C.F.R. § 54.511(d). The latter, on the other hand (if signed on or before July 10, 1997), should be considered simply continuations of existing contracts that are not subject to competitive bidding until the renewal term expires. 47 C.F.R. § 54.511(c)(1)(i) (“A contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract.”).

The contracts in question were competitively bid at their inception, so the Commission’s policy of ensuring that all providers had an opportunity to bid to offer the service was met. The renewal clause was included in the initial contract. Under that clause, the contract could be extended for a relatively short, specified period, at a specified rate, if one or both parties concur. There is no further negotiation over the rates, terms or conditions – either the renewal clause is exercised at the specified rate, or the contract lapses. The distinction between this type of contract and one that is subject to subsequent negotiation between the parties is one that the courts have recognized, as Florida shows. Petition at 5-7. Such renewal clauses “did not create new and successive contracts.... The option to extend, therefore, is in no different posture than the contract as a whole.” *City of Lakeland v. Union Oil Co. of California*, 352 F.Supp. 758, 763-64 (M.D. Fla. 1973) cited in Florida’s petition at 7. The Commission can reasonably make the same finding.

III. Conclusion

Accordingly, the Commission should grant Florida's petition and find that contracts signed on or before July 10, 1997 that contain specific renewal clauses and are not subject to renegotiation need not be rebid in order to receive universal service funding.²

Respectfully Submitted,

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² Bell Atlantic is also filing an electronic copy of these comments via the Internet.